

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JAN 11 2008

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

MOISES ZELAYA,

Appellant.

)  
)  
) 2 CA-CR 2007-0103  
) DEPARTMENT B  
)

MEMORANDUM DECISION

) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)  
)  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20061878

Honorable Richard Nichols, Judge

AFFIRMED

John William Lovell

Tucson  
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 After a jury trial, appellant Moises Zelaya was convicted of possessing more than four pounds of marijuana for sale and transferring two or more pounds of marijuana. See A.R.S. § 13-3405(A)(2), (4). The trial court sentenced him to concurrent, partially mitigated terms of 3.5 years' imprisonment on each count. Zelaya appeals from his convictions and sentences.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing that he has found no arguable issue to raise on appeal and asking this court to “search the record for fundamental error.” Zelaya has not filed a supplemental brief.

¶3 We view the evidence in the light most favorable to upholding the verdicts. *See State v. Tamplin*, 195 Ariz. 246, ¶2, 986 P.2d 914, 914 (App. 1999). Police detectives observing Zelaya from outside a UPS store suspected that a box Zelaya attempted to mail at the store contained marijuana. One of the detectives testified that Zelaya’s behavior, the behavior of Zelaya’s companion, and the “size and shape of the box” were “consistent with what [police] see with shipping . . . marijuana parcels.”

¶4 After Zelaya left the store, the detectives inspected the box and found indications that the box contained an illegal substance: it was being shipped to a hotel in Illinois; it had been glued shut; and it smelled of a masking agent. A dog trained to detect the smell of marijuana “alert[ed] on the box.” The detectives obtained a search warrant for the box, opened it, and discovered inside a 37.3-pound bale of marijuana that was “consistent with for sale quantities of marijuana.” Zelaya was later arrested at his residence. After being advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), he admitted that he had shipped the box and knew it “probably” contained marijuana.

¶5 Despite counsel’s avowal that he could find no arguable issue to raise in Zelaya’s appeal, he states:

The lack of certain evidence gives rise to the appearance of an arguable issue in that the State did not present testimony from the UPS clerk that the suspect box was the box that [Zelaya] brought into the store. It therefore appears that chain of custody was not established.

As counsel points out, however, one of the detectives testified that the box he searched was the only one in the store matching the appearance of the box he had seen Zelaya carry into the store. The information on the shipping label also matched Zelaya's admissions about how the box was labeled. Therefore, the store clerk's testimony was unnecessary to establish that the box searched was the one Zelaya had brought into the store.

¶6 Having reviewed the record in its entirety pursuant to our obligation under *Anders* and having found no fundamental error, we affirm Zelaya's convictions and sentences.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge